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IN RE GEOFFREY ROBERTSON

HIGH COURT MALAYA, KUALA LUMPUR
KC VOHRAH J
[ORIGINATING MOTION NOS: R1-17-35-1999
& R2-17-56-1999]
b 2 APRIL 2001

LEGAL PROFESSION: *Admission - Ad hoc - Queen's counsel - Special qualifications or experience - Whether available amongst solicitors in Malaysia - Complex issues of defamation, media and civil liberties - Legal Profession* c *Act, s. 18*

There were two applications by the applicant before the court. The applicant is a Queen's Counsel practicing in England and he sought to be admitted and enrolled as an advocate and solicitor of the High Court in Malaya under s. 18 of the Legal Profession Act 1976 ('the Act')
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The solicitors of the defendants in two civil suits were instructed to engage the applicant as lead counsel for them in the said suits.

Held:

e **[1]** The applicant satisfied all the conditions save that the Attorney General and the plaintiff disputed that for the purpose of the two civil suits the applicant possessed any special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia.

f **[2]** There were complex issues posed by the two civil suits: (i) whether the defence of qualified privilege should also be extended or liberalised in this jurisdiction and whether this extension would be consonant with art. 10 of the Federal Constitution; (ii) whether the publication of the article concerned in jurisdictions other than Malaysia would be actionable in Malaysia; and (iii) whether the role played or assistance given by Star
g Papyrus Printing ('Star') made it liable as a "printer" at common law and whether Star should be held liable for the publication within Malaysia. The applicant had appeared as counsel in cases involving issues (ii) and (iii) in other jurisdictions.

h **[3]** The full scope and impact of art. 10 of the Federal Constitution (in the context of defamation cases) in our jurisdiction remains uncharted and, at the very least, is an issue which requires full and further argument.

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[4] There was no doubt that we have excellent lawyers in our country who have the expertise in the area of the law relating to defamation, the media and civil liberties. However, our lawyers may not be specialists in or devoted to these particular areas of the law.

[5] The applicant had been immersed in defamation, media and civil liberties law for a considerable length of time as a QC. He has had the advantage of being involved as an advocate in other jurisdictions relating to these areas of the law and had acquired a greater depth of knowledge and understanding, on a comparative basis, in such areas. He was a scholar and had written and lectured extensively on these areas of the law. He certainly had a distinct and clear advantage over our own excellent lawyers in this country. The applicant possessed special qualifications and experience of a nature not really available amongst advocates and solicitors in practice in Malaysia.

[Applicant admitted.]

Case(s) referred to:
AG v. Wain & Ors [1991] 2 MLJ 525 ***(refd)***
Ahmad Said v. Zulkiflee Bakar [1997] 5 MLJ 542 ***(refd)***
Albert Reynolds v. Times [1998] 3 All ER 961 ***(refd)***
Albert Reynolds v. Times Newspapers [1999] 4 All ER 609 ***(refd)***
Berezovsky and Glouchkov v. Forbes Inc & Anor (Times, 27 November 1998) ***(refd)***
Bowman v. UK [1998] 1 CLY 1 ***(refd)***
Chadha & Osicom v. Dow Jones Inc [1999] CLY 283 ***(refd)***
Goodwin v. UK [1996] 22 EHRR 123 ***(refd)***
Graham Starforth Hill v. The Bar Council of Malaya & Anor [1972] 1 MLJ 178 ***(refd)***
Institute of Commercial Management (UK) v. New Straits Times Press (M) Bhd [1993] 2 CLJ 365 ***(refd)***
Lange v. Atkinson [1998] NZLR 424 ***(refd)***
Lange v. Australian Broadcasting Corp [1997] 189 CLR 520 ***(refd)***
Lee Kuan Yew v. Chin Vui Khen & Anor [1991] 3 MLJ 494 ***(refd)***
Lee Kuan Yew v. Derek Gwyn Davies & Far Eastern Economic Review [1990] 1 CLJ 583; [1990] 3 CLJ (Rep) 691 ***(refd)***
Lee Wong Tiong v. PP, Re SK Lee [1971] 2 MLJ 40 ***(refd)***
Pratt and Morgan v. AG of Jamaica [1994] 2 AC 1 ***(refd)***
Pustaka Delta Pelajaran Sdn Bhd v. Berita Harian [1998] 6 MLJ 529 ***(refd)***
Rees v. Crane [1994] 2 AC 173 ***(refd)***
Reynolds v. Times [1998] 3 WLR 862 ***(refd)***
Saif Al Islam Gaddafi v. Telegraph Group Ltd [2000] EMLR 43 ***(refd)***
Tolstoy Miloslavsky v. UK [1995] 1 CLY 458 ***(refd)***

Legislation referred to:
Advocates and Solicitors Ordinance 1947, s. 8A
Federal Constitution, art. 10(1)(a), (2)(a)
Legal Profession Act 1976, s. 18(1)(a), (2)

European Convention on Human Rights [UK], art. 10

Other source(s) referred to:
Andrew Nicol & Geoffrey Robertson, *Media Law,* 1989, 3rd edn
Freedom: The Individual and the Law, 1989, 6th edn
Freedom: The Individual and the Law 1993, 7th edn

For the applicant - Gurmeet Kaur (Bhag Singh); M/s Shafee & Co
For the plaintiff - R Thayalan (Ashok Vijay); M/s VK Lingam & Co

For the A-G - Ahmad Kamal SFC
For the Bar Council - Edmund Bon
For KL Bar Committee - Yasmeen Shariff

Reported by Mariette Peters-Goh

JUDGMENT

KC Vohrah J:

There are two applications before me by Mr. Geoffrey Robertson (the applicant). He is a Queen's Counsel practising in England and he seeks to be admitted and enrolled as an advocate & solicitor of the High Court Malaya under s. 18 of the Legal Profession Act 1976 (the Act).

The solicitors of the 1st defendant in Civil Suit S2-23-14-99 (S2) and the solicitors for the defendant in Civil Suit S2 (S5)-23-13-99 (S5) were instructed to engage the applicant as lead counsel for them in the said suits.

Both suits filed in the Civil Division of the Kuala Lumpur High Court by the same plaintiff, Tan Sri Vincent Tan Chee Yiou (Vincent Tan), concern a libel claim arising from an article published in 21 December 1998 edition of the Asia Wall Street Journal (AWSJ).

In S2 Professor Jomo Kwame Sundram (Jomo) is the 1st defendant. He is being sued as the writer of the said article. There are four other defendants in that suit.

In S5 the defendant is Star Papyrus Printing Sdn Bhd (Star). It is being sued in its capacity as the printer of AWSJ.

These two applications for admission are by way of originating motion and both the motions filed in the appellate and Special Powers Division of the High Court were ordered by the Chief Judge of Malaya to be heard by this court as the applicant is the same person and both applications involve Civil Suits in respect of alleged libel of the same plaintiff and arising from the same article.

Issues In The Civil Suits

Before I go further there is a need to sketch out the salient features of both the Civil Suits, S2 and S5, and the issues raised therein. S2 and S5 concern claims for damages against Jomo and Star respectively for alleged libel of the plaintiff, Vincent Tan, arising from the publication of an article entitled "Malaysia Props Up Crony Capitalists." Jomo is being sued in his capacity as the writer of the said article while Star is being sued in its capacity as printer of the AWSJ within this jurisdiction.

In the respective writs and statements of claim filed by the plaintiff, in S2 and S5, the averments are largely identical. The plaintiff essentially pleads that the said article is defamatory of him.

The plaintiff in particular avers that certain pleaded passages of the said article carry defamatory meanings.

Within both statements of claim, the plaintiff also pleads that the said article is actionable in several other countries including in Australia, China, Hong Kong, Indonesia, Japan and Singapore. And the claims by the plaintiff are, in S2 against Jomo and four others, RM250 million as damages for libel and in S5 against Star, RM200 million as damages for libel.

In S5, Star has pleaded the following defences:

(i) a denial of any liability as "printer" for the said publication;

(ii) a denial of any liability for publication in any jurisdiction other than Malaysia as Star has no role to play in the publication of the AWSJ in any other jurisdiction apart from Malaysia;

(iii) a denial that the publication in countries other than Malaysia attracts any liability under Malaysian law;

(iv) a denial of any liability in libel under Malaysian law;

(v) a denial of the meanings pleaded by the said plaintiffs;

(vi) justification;

(vii) fair comment;

(viii) qualified privilege at common law;

(ix) and following from (vii) and (viii) above, the defence of freedom of speech and expression guaranteed by art. 10 of the Federal Constitution.

All of the defences save for those listed under (1) and (ii) above have also been pleaded in S2 against Jomo. It seems clear that the matters and issues arising from the Civil Suits for determination by a trial court or courts in the Civil Division include the following:

(i) Is there a cause of action in defamation?

(ii) Can the plaintiff establish liability against Jomo and Star for publication in any jurisdiction apart from Malaysia? And are the extra territorial publications actionable under the laws of Malaysia? This would also bring up the *forum conveniens* issue.

(iii) Is the defence of justification or of fair comment or of qualified privilege made out? In determining these issues, the court will also have to consider:

(a) constitutional issues such as art. 10 of the Federal Constitution which guarantees the freedom of speech and expression;

(b) the interaction of the applicable libel laws in the country with the fundamental civil liberties provided and guaranteed by the Federal Constitution ie, art. 10(1)(a) read with art. 10(2)(a);

(c) the scope of the qualified privilege defence at common law bearing in mind that this area of the law of defamation has seen recent developments in other Commonwealth jurisdictions, such as in England, Australia and New Zealand.

(iv) What is the appropriate quantum of damages bearing in mind that disproportionately high awards are a fetter on the freedom of expression?

The Originating Motion And Section 18 Of The Legal Profession Act 1976

Both the motions have been filed under s. 18 of the Act.

Section 18 reads as follows:

18. Admission in special cases

(1) Notwithstanding anything contained in this Act, the Court may, for the purpose of any one case and subject to the following subsections, admit to practise as an advocate and solicitor any person who, if he was a citizen of, or a permanent resident in Malaysia, would be eligible to be

admitted as an advocate and solicitor of the High Court and no person shall be admitted to practise as an advocate and solicitor under this subsection unless:

(a) for the purpose of that particular case he has, in the opinion of the court, special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia; and

(b) he has been instructed by an advocate and solicitor in Malaysia.

(2) Any person applying to be admitted under this section shall do so by originating motion verified by his own affidavit, or that of the advocate and solicitor instructing him, stating the names of the parties and the brief particulars of the cause or matter in which the applicant intends to appear, and exhibiting in the affidavit the consent of the applicant to appear in the cause or matter; the originating motion and affidavit or affidavits shall be served on the Attorney General, the Secretary of the Bar Council and of the State Bar Committee in the State where such cause or matter is to be heard and the other party or parties to the cause or matter; at the time of such service the applicant shall pay one hundred ringgit each to the Secretary of the Bar Council and of the State Bar Committee to cover their costs incurred in the application.

(3) Before admitting a person under this section the Court shall have regard to the views of each of the persons served with the application.

(4) ...

(5) ...

(6) In this section the words 'cause or matter' include any interlocutory or appeal proceedings connected with any cause or matter.

The predecessor provision of s. 18 under the repealed Advocates and Solicitors Ordinance 1947, s. 8A, has been the subject of judicial interpretation in several cases. As has been pointed out in the Federal Court in *Graham Starforth Hill v. The Bar Council of Malaya & Anor* [1972] 1 MLJ 178 an applicant for ad hoc admission under s. 8A of the Advocates and Solicitors Ordinance, for the purpose of one case only, has to satisfy four conditions: (a) that he is a person who if he was a citizen of Malaysia or a permanent resident in Malaysia would be a qualified person within the meaning of the Ordinance; (b) that he has been instructed by an advocate and solicitor in Malaysia; (c) that for the purpose of that particular case he has, in the opinion of the court, special qualifications or experience; of a nature (d) that such special qualifications or experience are of a nature not available amongst advocates and solicitors in Malaysia.

The same four conditions have been repeated in s. 18 of the present Act but there is an additional condition contained in s. 18(2) which is that the applicant's consent to appear in the cause or matter must be exhibited in the affidavits verifying the motions.

It is not disputed that the applicant satisfies all the conditions save that the Attorney General in affidavits filed by officers in the Attorney General in September and October last year and Vincent Tan in an affidavit filed by an advocate and solicitor in September 1999 disputed that for the purpose of the particular cases, S1 and S5, the applicant possesses any special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia. They however do not dispute any of his accomplishments that have been listed in the affidavits supporting the motions.

The Bar Council and the Kuala Lumpur Bar Committee do not object to the applications herein. In fact they support the applications.

Whether Applicant Has Special Qualifications Or Experience

As to what is meant by the words "special qualifications, knowledge or experience of a nature not available amongst advocates and solicitors in Malaysia" these words also appeared in s. 8A of the Advocates and Solicitors Ordinance 1947 and the interpretation of Sharma J in *Lee Wong Tiong v. PP, Re SK Lee* [1971] 2 MLJ 40 is instructive. He observed in respect of the words "special qualifications and experience":

> The word 'qualification' used in section 8A(2)(a) denotes an accomplishment or quality and the adjective 'special' qualifying it indicates that the contemplated should be of an exceptional degree or such that excels in some way the measure of accomplishments reached by the advocates and solicitors of Malaysia. As I read sub-section (2)(a) the applicant should be such a person who, as a lawyer and on the evidence before the court, exhibits distinguished qualities or is devoted to a particular branch or field of law. Instances would be of persons who specialise, for example, in income tax law, or trade marks, divorce practice, shipping law, etc. and have achieved such heights in the exercise of their profession that they stand out as great luminaries in the firmament of law. The list of such examples can by no means be exhaustive. It all depends upon the particular qualifications a particular lawyer has or the particular subject to which he has devoted himself. There may be, for example, instances where the lawyer exclusively practices before the highest courts of the land, or the highest appellate courts of the various countries of the Commonwealth or other lands where the law is similar to our own.

There is no dispute that, as disclosed in the verifying affidavits, that the applicant who was admitted to the Bar of England and Wales in 1973 had a distinguished academic career – he was a Rhodes Scholar and he obtained his BCL from Oxford. He has been in practice for about 27 years and is the Head of his set of chambers, Doughty Street Chambers. He was appointed a Queen's Counsel in 1988, an Assistant Recorder in 1993 (he is now a Recorder) and in 1997 he was made a Master of the Bench of Middle Temple. He was admitted to practise in other Commonwealth jurisdictions, at the Bar of New South Wales and Australia, the Bar of Trinidad and Tobago, Antigua and for specific cases only at the Bar of Singapore and the Bar of Hong Kong.

He is also a reputed scholar and was made a Visiting Professor at the reputed Birkbeck College, University of London, at the University of New South Wales and the University of Warwick. And he has been regularly invited to deliver lectures organised by the American Bar Association.

The applicant is also a published author. He co-authored a leading textbook on media law entitled "*Media Law* (1989) 3rd edn with Andrew Nicol, QC and was the author of the chapter on defamation appearing therein. He also co-authored a text, "*Freedom: The Individual and the Law"* (1989) 6 edn and (1993) 7 edn. He wrote "People Against the Press', a reputed and detailed study of defamation and alternative remedies.

The applicant has specialised in media, constitutional and defamation laws and has appeared and argued landmark cases in these areas of law in the House of Lords, the Privy Council and the European Court of Human Rights and other courts in the Commonwealth, amongst which are *Goodwin v. UK* [1996] 22 EHRR 123 (media law); *Bowman v. UK* [1998] 1 CLY 1 (art. 10 of the European Convention on Human Rights and its interaction with election laws in the United Kingdom); *Pratt and Morgan v. AG of Jamaica* [1994] 2 AC 1 (Privy Council appeal from Jamaica on human rights and fundamental freedoms and the infringement of constitutional rights); *Rees v. Crane* [1994] 2 AC 173 (Privy Council appeal from Trinidad and Tobago on constitutional issues and the removal of judge from office); *Berezovsky and Glouchkov v. Forbes Inc & Anor* (Times 27 November 1998) (Court of Appeal UK) (extent of circulation of publication and whether sufficient to found a cause of action in England and *forum conveniens*); *Chadha & Osicom v. Dow Jones Inc* (Court of Appeal UK) [1999] CLY 283 (extent of circulation of publication and whether sufficient to found a cause of action in England and *forum conveniens*); *Saif Al Islam Gaddafi v. Telegraph Group Ltd* [2000] EMLR 43 (defence of qualified privilege post *Reynolds v. Times* [1998] 3 WLR 862).

In the Ad Hoc Admissions in Singapore he appeared in *Lee Kuan Yew v. Derek Gwyn Davies & Far Eastern Economic Review* [1990] 1 CLJ 583 (a case on defamation, since referred to and/or followed by our courts in *Institute of Commercial Management (UK) v. New Straits Times Press (M) Bhd* [1993] 2 CLJ 365; *Pustaka Delta Pelajaran S/B v. Berita Harian* [1998] 6 MLJ 529; *Ahmad bin Said v. Zulkiflee bin Bakar* [1997] 5 MLJ 542). He also appeared in three other cases.

In addition the applicant was appointed as an advisor to the previous Australian Government on defamation matters and more recently was invited to conduct a special inquiry in Mauritius on the country's media laws at the behest of the Mauritian Government.

The applicant is accepted in England, in America and the British Commonwealth as being a leading Barrister and a leading scholar in the area of defamation, media and civil liberties laws. In fact the applicant is given full recognition as being one of the top Barristers in England specialising in the area of defamation, media and civil liberty laws.

In the context of Malaysia it will be remembered that the Bar Council and the Bar Committee, bodies interested in promoting and safeguarding the interests of advocates and solicitors in the States of Malaysia and in Kuala Lumpur respectively, support his applications for admission and as a measure of confidence the Bar Council in fact invited him to deliver and he delivered a lecture on 18 May 1999 in Kuala Lumpur entitled "Developments Pertaining to Media Law with Special Reference to Defamation and Contempt" and to attend the XII Commonwealth Conference held in Kuala Lumpur in September 1999 where the applicant spoke on various topics concerning defamation, contempt of court and civil liberties.

I have no doubt that the applicant with his extensive and formidable experience has special qualifications in the field of defamation, media and civil liberties law. It is also very apparent that the United Kingdom and other Commonwealth jurisdictions, in particular, Australia, Hong Kong, Singapore and Mauritius as well as the United States of America have given significant recognition to and acceptance of the applicant's special expertise in these areas of the law.

Whether Special Qualifications Or Experience Not Available Amongst Advocates and Solicitors In Malaysia

Sharma J observed as what is required to be fulfilled in regard to the second aspect in relation to the special qualifications and experience, that they are "of a nature not available amongst advocates and solicitors in Malaysia" at 40 and 41:

> "The words 'not available' used in sub-section (2)(a) seem to mean 'not obtainable.' It would thus seem that it is the excelling virtue born of the applicant's special qualifications or experience that has got to be considered and that excelling virtue must be such as outclasses the excellence to be found in the local lawyers. The special qualifications or experience are required to be of a quality and type which cannot be had amongst the advocates and solicitors in Malaysia. The applicant may have special qualifications or experience but that alone does not seem to be sufficient under the statute. He has to go further and satisfy the court that the special qualifications he possesses or the experience he professes to have are comparatively of such a type and character that no advocate and solicitor practising in Malaysia can be said to possess or equal that high degree of accomplishment which has been acquired or exhibited by the applicant. I have said earlier that in my view section 8A seems apparently aimed to facilitate the admission of those members of the Bar from other countries who have attained renown and distinction.

Before I proceed to discuss further and determine whether the applicant has satisfied the second aspect of s. 18(1)(a), let me deal with the dispute by the Attorney General (see affidavits filed in September and October last year) and by Vincent Tan that these two Civil Suits raised complex issues which require the services of the applicant. It has been argued that no novel, complicated or serious issues have been raised; that art. 10 of the Constitution has been the subject matter of decided cases in Malaysia and that the same is not an issue which requires the services of the applicant; that the applicant in any event has no "special qualifications or experience" to argue constitutional issues arising from art. 10 of the Constitution as he has not disclosed any particular expertise in the Malaysian Federal Constitution; that the issue pertaining to quantum of damages in defamation cases is settled law in Malaysia and as such, Star and Jomo cannot be said to require the expertise possessed by the applicant in this field.

It has to be pointed out that although s. 18(1)(a) does not require the applicant to show that the Civil Suits for which his services are required disclose "novel", "serious" or "complex issues", there are indeed complex issues to be decided in this jurisdiction. There is the complex issue whether the defence of qualified privilege in our jurisdiction should follow the developments of the said defence in England, Australia and New Zealand. These are the uncharted areas as to what the ambit and scope of art. 10 of the Federal Constitution is and how the said article interacts with the law of defamation. Then there is the serious issue as to how the courts should view the question of damages in the light of foreign case law on the need to restrict disproportionately high awards which restrict the right to free expression.

The scope of qualified privilege defence has undergone extensive changes in the Commonwealth jurisdictions namely in England, Australia and New Zealand. It would appear that the following decisions in the said respective jurisdictions now determine the ambit of the said defence as follows:

(i) **In England**

In *Albert Reynolds v. Times Newspapers* [1999] 4 All ER 609, the House of Lords recognised the extension of the scope of the qualified privilege defence to include generally published statements provided that the "circumstances" of publication merit such protection. The House of Lords further stated that the courts should pay special attention to the importance of freedom of speech and expression and should be slow to conclude that a publication was not made in the public interest. It will be up to the trial court or courts to apply the test as expounded in the Court of Appeal decision in *Albert Reynolds v. Times* [1998] 3 All ER 961, wherein the Court of Appeal upon considering the decisions in Australia and New Zealand and art. 10 of the European Convention on Human Rights recognised that the common convenience and welfare of the modern plural democracy was best served by ample flow of information on matters of public interest to the community and that in maintaining a proper balance between the freedom of speech and a public figure's right to his reputation, the defence of common law qualified privilege was available where:

(a) the defendant had a legal, moral or social duty to publish the information to those (including the general public) who had a corresponding interest to receive the information; and

(b) that the above test would be more readily satisfied than previously having regard to the following factors:

(i) nature, status and source of the information;

(ii) circumstances of the information.

(ii) **In Australia**

Australia too appears to have departed from the old English common law position by recognising an implied freedom within its constitution which allows for the "freedom of communication on matters pertaining to government and politics". This was established in the case of *Lange v. Australian Broadcasting Corp* [1997] 189 CLR 520.

(iii) **In New Zealand**

In *Lange v. Atkinson* [1998] NZLR 424, the New Zealand Court of Appeal recognized the need to extend the boundaries of the qualified privilege defence to statements published generally in light of the provisions of the

Bill of Rights Act 1990 and to a large extent adopted the Australian High Court decision but decided not to adopt the "reasonableness test" therein as being part of New Zealand law.

It will therefore be noted that while all of the abovementioned Commonwealth jurisdictions have accepted the need to extend the boundaries of the qualified privilege defence to statements published generally, the manner in which the "new" test has been stated varies in each of the said cases. It is further pertinent to note that the developments in Australia and New Zealand placed great emphasis on their respective written Constitution or Bill of Rights Act 1990 wherein the freedom of expression and speech is guaranteed as a fundamental liberty. The applicant has shown himself to be a specialist in these areas ie, defamation and civil liberties and these matters in the context of constitutional law as pointed out earlier.

Clearly there are complex issues posed by the two Civil Suits whether the defence of qualified privilege should also be extended or liberalised in this jurisdiction and whether this extension would be consonant with our art. 10 of the Constitution.

In addition there is the novel issue in Malaysia whether the publication of the said article in jurisdictions other than Malaysia are actionable in Malaysia. The applicant appeared as counsel in *Chadha & Osicom v. Dow Jones* and *Berezovksy v. Forbes* [1999] CLY 283 (Times 27.11.98] where the issue was raised.

Then there is also the novel issue whether the role played by or the assistance given by Star makes Star liable as a "printer" at common law and whether Star should be held liable for the publication within Malaysia. It had to be noted that in the Singapore case of *AG v. Wain & Ors* [1991] 2 MLJ 525, the applicant appeared as counsel to argue the liability of the printers therein for contempt of court.

As to the argument that the applicant has no expertise to argue on art. 10 of the Federal Constitution it has to be noted that the only decision pertaining to the interaction between the said article and defamation in our jurisdiction is the decision of *Lee Kuan Yew v. Chin Vui Khen & Anor* [1991] 3 MLJ 494 but the decision considered only a limited aspect of the interaction and the decision was for an interlocutory application. The full scope and impact of art. 10 (in the context of defamation cases) in our jurisdiction remains uncharted and, at the very least, is an issue which requires full and further argument. In this respect, it is pertinent to keep in mind the fact that the applicant is renowned and has special qualifications or experience in the area of freedom of expression as pointed earlier.

As to the argument that the quantum of damages has been settled by case law, I have grave hesitation to conclude that the matter is closed.

As was pointed out by the affidavits in support of the motions the "current trend of exorbitant amounts" given by way of damages in defamation cases gives rise for concern and lends extra need "for guidance in determining the scope of the public right of freedom of speech", a matter of public interest and widely debated in Malaysia.

I agree with submission that the applicant's "special expertise and qualifications" in the area of defamation laws would give him an edge with respect to leading the argument on the issue of the proper quantum of damages to be awarded to a plaintiff in a libel action. The applicant's special expertise in defamation will undoubtedly be of assistance and his understanding and experience in dealing with the European Convention of Human Rights will put him in a better stead to argue on far reaching concepts relating to freedom of expression in the light of case law including the case of *Tolstoy Miloslavsky v. UK* [1995] 1 CLY 458. In that case it was held by the European Court of Human Rights that the United Kingdom system whereby the jury set the amount of the award for non-financial damage using fairly unrestricted discretion contravened art. 10 of the European Convention of Human Rights because insufficient safeguards were provided to prevent disproportionately high awards.

I now come to the question relating to the second aspect of s. 18(1)(a), whether the applicant possesses special qualifications or experience not available amongst advocates and solicitors in Malaysia. I think in this context there can be no doubt whatsoever that we have excellent lawyers in our country who have expertise in the area of law relating to defamation, the media and civil liberties. But these lawyers are not specialists in or devoted to these particular areas of law. For a long time there were only a few defamation cases in our courts. Our lawyers did not really have the opportunity to involve themselves in depth in these areas of law or to keep abreast of the latest developments therein or to have honed their forensic skills on defamation cases. It is only over the last few years, however, there have been a spate of defamation cases, all with huge claims for damages, which have been filed including these two suits and most of them have yet to be heard. These two cases raise particularly complex issues as has been shown relating to the law of defamation, the media and civil liberties. It is therefore not surprising that the then secretary of the Bar Council in his affidavit stated this:

> The Bar Council verily believes that the applicant has vast experience in the area of defamation and media law and that he possesses special qualifications and experience not readily available amongst advocates and solicitors presently in practice in Malaysia ...

The applicant has been immersed in defamation, media and civil liberties law for a considerable length of time as a QC. He has had the advantage of being involved as an advocate in other jurisdictions relating, again, to these areas of law and has acquired a greater depth of knowledge and understanding, on a comparative basis, in such areas. He is a scholar and has written and lectured extensively on these areas of law. He certainly has a distinct and clear advantage over our own excellent lawyers in this country. Our Bar Council has acknowledged this and Bar Committee implicitly so. They did not dispute the accomplishments stated in the affidavits supporting the motions – in fact they support the applications. In my view the applicant possesses special qualifications and experience of a nature not really available amongst advocates and solicitors in practice in Malaysia and I admit the applicant to practise as an advocate and solicitor for the purposes of S2 and S5.